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10 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. UL2007-423

13 BENJAMIN THOMAS JAYNE
24950 Via Florecer, #82
14 Mission Viejo, CA 92692

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Heather Martin ("Complainant") brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the California Board of Occupational Therapy
21 ("Board"), Department of Consumer Affairs.

22 2. On or about September 19, 2008, the Board received an application for an
23 occupational therapist license from Benjamin Thomas Jayne ("Respondent"). On or about
24 September 16, 2008, Respondent certified under penalty of perjury that all of the information
25 contained in the application was true and correct. The Board denied the application on
26 November 26, 2008.

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1 7. Code section 480 states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that
3 the applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of
6 nolo contendere. Any action which a board is permitted to take following the
7 establishment of a conviction may be taken when the time for appeal has elapsed,
8 or the judgment of conviction has been affirmed on appeal, or when an order
9 granting probation is made suspending the imposition of sentence, irrespective
10 of a subsequent order under the provisions of Section 1203.4 of the Penal
11 Code.

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13 (3) Done any act which if done by a licentiate of the business or profession
14 in question, would be grounds for suspension or revocation of license.

15 The board may deny a license pursuant to this subdivision only if the
16 crime or act is substantially related to the qualifications, functions or duties
17 of the business or profession for which application is made . . .

18 8. Code section 4060 states:

19 No person shall possess any controlled substance, except that furnished to
20 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
22 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
23 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
24 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
25 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
26 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
27 This section shall not apply to the possession of any controlled substance by a
28 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
29 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
30 practitioner, or physician assistant, when in stock in containers correctly
31 labeled with the name and address of the supplier or producer.

32 Nothing in this section authorizes a certified nurse-midwife, a nurse
33 practitioner, a physician assistant, or a naturopathic doctor, to order his or
34 her own stock of dangerous drugs and devices.

35 9. Health and Safety Code section 11170 states that no person shall prescribe,
36 administer, or furnish a controlled substance for himself.

37 10. Wisconsin Statutes, section 961.41, states, in pertinent part:

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39 (3g) POSSESSION. No person may possess or attempt to possess a
40 controlled substance or a controlled substance analog unless the person obtains
41 the substance or the analog directly from, or pursuant to a valid prescription or

1 order of, a practitioner who is acting in the course of his or her professional
2 practice, or unless the person is otherwise authorized by this chapter to possess the
3 substance or the analog. Any person who violates this subsection is subject to the
4 following penalties:

5 (e) Tetrahydrocannabinols. If a person possesses or attempts to possess
6 tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance
7 analog of tetrahydrocannabinols, the person may be fined not more than 1,000 or
8 imprisoned for not more than 6 months or both upon a first conviction and is
9 guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this
10 paragraph, an offense is considered a 2nd or subsequent offense if, prior to the
11 offenders conviction of the offense, the offender has at any time been convicted of
12 any felony or misdemeanor under this chapter or under any statute of the United
13 States or of any state relating to controlled substances, controlled substance
14 analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic
15 drugs ...

11 CONTROLLED SUBSTANCE AT ISSUE

12 11. "Marijuana" is a Schedule I controlled substance as designated by Health
13 and Safety Code section 11054, subdivision (d)(13).

14 FIRST CAUSE FOR DENIAL

15 (Criminal Conviction)

16 12. Respondent's application for an occupational therapist license is subject to
17 denial pursuant to Code sections 2570.28, subdivision (e), 480, subdivision (a)(1), and 480,
18 subdivision (a)(3), in that on or about March 18, 2005, in the criminal proceeding titled *State of*
19 *Wisconsin v. Benjamin Thomas Jayne* (Circuit Ct. Waukesha County, WI, 2005, Case
20 No. 2005CF127), Respondent pled guilty to violating Wisconsin Statutes, section 961.41,
21 subdivision (3g)(e) (possession of tetrahydrocannabinols, a misdemeanor), a crime substantially
22 related to the qualifications, functions, or duties of an occupational therapist. The circumstances
23 of the crime are as follows: On or about February 6, 2004, Respondent purchased a 1/4 pound of
24 "nuggets", a high grade form of marijuana, from an undercover officer with the Waukesha Police
25 Department for \$1,200.

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1 **SECOND CAUSE FOR DENIAL**

2 **(Fraudulent, Dishonest, or Corrupt Act)**

3 13. Respondent's application for an occupational therapist license is subject to
4 denial pursuant to Code section 2570.28, subdivision (h), in that Respondent committed a corrupt
5 act that is substantially related to the qualifications, functions, or duties of an occupational
6 therapist, as set forth in paragraph 12 above.

7 **THIRD CAUSE FOR DENIAL**

8 **(Unlawful Possession and Self-Administration of a Controlled Substance)**

9 14. Respondent's application for an occupational therapist license is subject to
10 denial pursuant to Code sections 480, subdivision (a)(3), and 2570.28, subdivision (a), on the
11 grounds of unprofessional conduct, as defined in Code section 2570.29, subdivision (a), in that
12 Respondent did the following:

13 **Possession of a Controlled Substance:**

14 a. On or about February 6, 2004, Respondent possessed the controlled
15 substance marijuana without a valid prescription from a physician, dentist, podiatrist,
16 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

17 **Self-Administration of Controlled Substances:**

18 b. On or about February 6, 2004, Respondent self-administered the controlled
19 substance marijuana without lawful authority therefor.

20 **FOURTH CAUSE FOR DENIAL**

21 **(Use of a Controlled Substance to an Extent or in a Manner**

22 **Dangerous or Injurious to Oneself and Others)**

23 15. Respondent's application for an occupational therapist license is subject to
24 denial pursuant to Code sections 480, subdivision (a)(3), and 2570.28, subdivision (a), on the
25 grounds of unprofessional conduct, as defined in Code section 2570.29, subdivision (b)(1), in
26 that in and before February 2004, Respondent used the controlled substance marijuana to an
27 extent or in a manner dangerous or injurious to himself and/or others, as follows: Respondent

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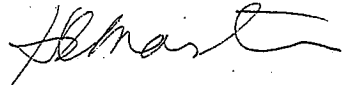
1 engaged in illegal drug use and used marijuana for several months prior to his arrest for
2 possession of marijuana on February 6, 2004.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the California Board of Occupational Therapy issue a
6 decision:

- 7 1. Denying the application of Benjamin Thomas Jayne for an occupational
8 therapist license;
9 2. Taking such other and further action as deemed necessary and proper.

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11 DATED: January 16, 2009

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15 HEATHER MARTIN
16 Executive Officer
17 California Board of Occupational Therapy
18 Department of Consumer Affairs
19 State of California

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21 Complainant
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